

Department of the Air Force, DoD

§ 865.101

action to the Chief of Staff, U.S. Air Force, for necessary action.

(b) *Settlement of claims.* The Air Force is authorized, under 10 U.S.C. 1552, to pay claims for amounts due to applicants as a result of correction of military records.

(c) The Executive Director will furnish the Defense Finance and Accounting Service (DFAS) with AFBCMR decisions potentially affecting monetary entitlement or benefits. DFAS will treat such decisions as claims for payment by or on behalf of the applicant.

(d) DFAS settles claims on the basis of the corrected military record. Computation of the amount due, if any, is a function of DFAS. Applicants may be required to furnish additional information to DFAS to establish their status as proper parties to the claim and to aid in deciding amounts due.

(e) *Public access to decisions.* After deletion of personal information, AFBCMR decisions will be made available for review and copying at a public reading room in the Washington, DC metropolitan area.

§ 865.8 Miscellaneous provisions.

(a) At the request of the Board, all Air Force activities and officials will furnish the Board with:

(1) All available military records pertinent to an application.

(2) An advisory opinion concerning an application. The advisory opinion will include an analysis of the facts of the case and of the applicant's contentions, a statement of whether or not the requested relief can be done administratively, and a recommendation on the timeliness and merit of the request. Regardless of the recommendation, the advisory opinion will include instructions on specific corrective action to be taken if the Board grants the application.

(b) *Access to records.* Applicants will have access to all records considered by the Board, except those classified or privileged. To the extent practicable, applicants will be provided unclassified or nonprivileged summaries or extracts of such records considered by the Board.

(c) *Payment of expenses.* The Air Force has no authority to pay expenses of any kind incurred by or on behalf of an

applicant in connection with a correction of military records under 10 U.S.C. 1034 or 1552.

Subpart B—Air Force Discharge Review Board

AUTHORITY: Sec. 8012, 70A Stat. 488; sec. 1553, 72 Stat. 1267, 10 U.S.C. 8012, 1553.

SOURCE: 48 FR 37384, Aug. 18, 1983, unless otherwise noted.

§ 865.100 Purpose.

This subpart establishes policies for the review of discharges and dismissals under 32 CFR part 70, "Discharge Review Boards Procedures and Standards," 47 FR 37770, August 26, 1982. 1982, and explains the jurisdiction, authority, and actions of the Air Force Discharge Review Board. It applies to all Air Force activities. This subpart is affected by the Privacy Act of 1974. The system of records cited in this subpart is authorized by 10 U.S.C. 1553 and 8012. Each data gathering form or format which is required by this subpart contains a Privacy Act Statement, either incorporated in the body of the document or in a separate statement accompanying each such document.

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(a) Title 10 U.S.C., section 1553.

(b) Title 38 U.S.C., sections 101 and 3103, as amended by Pub. L. 95-126, October 8, 1977.

(c) DOD Directive 5000.19, "Policies for the Management and Control of Information Requirements," March 12, 1976.

(d) DOD Directive 5000.11, "Data Elements and Data Codes Standardization Program," December 7, 1964.

(e) DOD Directive 5000.12-M "DOD Manual for Standard Data Elements," December 1981.

(f) DOD Directive 1332.14, "Enlisted Administrative Separations," January 28, 1982.

(g) DOD Directive 5400.7, "DOD Freedom of Information Act Program," March 24, 1980; title 5 U.S.C., section 552.

(h) DOD Directive 5400.11, "Department of Defense Privacy Program," June 9, 1982; title 5 U.S.C., section 552a.

(i) Title 10 U.S.C., chapter 47, Uniform Code of Military Justice.

(j) *Wood v. Secretary of Defense*, Civ. No. 77-0684 (D.D.C.) (Order, December 3, 1981).

(k) *Urban Law Institute of Antioch College, Inc. v. Secretary of Defense*, Civ. No. 76-0530, (D.D.C.) (Stipulation of Dismissal, January 31, 1977) (Order and Settlement Agreement, July 30, 1982).

(l) Air Force Regulation 35-41, Vol III, Separation Procedures for USAFR Members, dated October 30, 1975.

(m) Air Force Regulation 36-2, Officer Personnel, Administrative Discharge Procedures, August 2, 1976.

(n) Air Force Regulation 36-3, Officer Personnel, Administrative Discharge Procedures, August 2, 1976.

(o) Air Force Regulation 36-12, Officer Personnel, Administrative Separation of Commissioned Officers and Warrant Officers, July 15, 1977.

(p) Air Force Regulation 39-10, Separation Upon Expiration of Term of Service, for Convenience of Government, Minority, Dependency and Hardship, January 3, 1977.

(q) Air Force Manual 39-12, Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program, September 1, 1966.

(r) Air National Guard Regulation 39-10, Enlisted Personnel-Separation, December 30, 1971.

§ 865.102 Statutory authority.

The Air Force Discharge Review Board (DRB) was established within the Department of the Air Force under section 301 of the Serviceman's Readjustment Act of 1944, as amended (now 10 U.S.C. 1553) and further amended by Pub. L. 95-126 dated October 8, 1977.

§ 865.103 Definition of terms.

(a) *Applicant*. A former member of the Armed Forces who has been dismissed or discharged administratively in accordance with Military Department regulations or by sentence of a court-martial (other than a general court-martial) and under statutory regulatory provisions whose application is accepted by the DRB concerned or whose case is heard on the DRB's own

motion. If the former member is deceased or incompetent, the term "applicant" includes the surviving spouse, next-of-kin, or legal representative who is acting on behalf of the former member. When the term "applicant" is used in this subpart, it includes the applicant's counsel or representative, except that the counsel or representative may not submit an application for review, waive the applicant's right to be present at a hearing, or terminate a review without providing the DRB an appropriate power of attorney or other written consent of the former member.

(b) *Complainant*. A former member of the Armed Forces (or the former member's counsel) who submits a complaint in accordance with § 865.121 of this subpart with respect to the decisional document issued in the former member's own case; or a former member of the Armed Forces (or the former member's counsel) who submits a complaint stating that correction of the decisional document will assist the former member in preparing for an administrative or judicial proceeding in which the former member's own discharge will be at issue.

(c) *Counsel or representative*. An individual or agency designated by the applicant who agrees to represent the applicant in a case before the DRB. It includes, but is not limited to: a lawyer who is a member of the bar of a federal court or of the highest court of a state; an accredited representative designated by an organization recognized by the Administrator of Veterans Affairs; a representative from a state agency concerned with veterans affairs; and representatives from private organizations or local government agencies.

(d) *Discharge*. A general term used in this subpart that includes dismissal and separation or release from active or inactive military status, and actions that accomplish a complete severance of all military status. This term also includes the assignment of a reason for such discharge and characterization of service.

(e) *Discharge review*. The process by which the reason for separation, the procedures followed in accomplishing separation, and characterization of